

REMARKS

Specification

The amendment to the specification makes an appropriate change to this application and introduces no new matter.

The examiner objects to page 9 of the written description as being unclear. The examiner wants to know what "lips 30 and 31 loosely associate or otherwise mingle with one another" means, and how lips 30 and 31 "mingle with one another."

On page 10, lines 12-16, applicant's specification provides that:

the lips that define the open end of pouch 11 can be shallow of lips 30 and 31 if desired. Lips 30 and 31 are constructed and arranged so that they normally loosely associate or mingle with one another or otherwise rest against one another passively.

On page 10, line 25 to page 11, line 13, applicant's specification provides that:

By releasing lips 30 and 31, they naturally come together and rest against one another as generally shown in Fig. 3. Insulating structure 12 keeps the food contained in chamber 14 warm. Because the engagement between lips 30 and 31 is a non-sealing engagement, and because pouch 11 is open, water vapor generated by the warm food is able to pass from pouch 11 and outwardly between opening 35 between lips 30 and 31 as it builds up in chamber 14. In this regard, opening 35 is never completely sealed and this provides a

partial vapor lock for chamber 14. This partial vapor lock inhibits moisture from building up in chamber 14 for inhibiting the food contained therein from becoming soggy, yet allows enough moisture vapor to remain therein for keeping the food moist.

Reading applicant's specification as a whole, it is clear that "loosely associate or otherwise mingle with one another" describes a non-sealing engagement between lips 30 and 31, which permits water vapor generated by warm food in the warming chamber to pass therebetween and outwardly from the warming chamber.

In view of the foregoing, it is believed that the examiner's objection of the specification is now moot and should be withdrawn.

Status of the Claims

Claims 1, 3, 8, 9, 14 and 16 are amended and no claims are canceled. Claims 1-20 are pending in this case. Claims 1, 8 and 14 are the only presently pending independent claims. The amendments to independent claims 1, 8 and 14 are made for reasons relating to patentability, and the amendments to claims 3, 9 and 16 are not made for reasons relating to patentability, but are rather made for reasons relating to clarity. The claim amendments make the appropriate changes to this application and address the section 112 rejections of claims 1-13 and 16, which section 112 rejections are now believed moot and should be withdrawn.

Prosecution History

The prosecution history is important for most patents, because it normally contains contemporaneous exchanges between the patent applicant and the Patent Office about what the claims mean. The prosecution history is thus a guide for teaching and clarifying what the claims mean and, more particularly, what the claim terms mean, because claim terms drive the meaning of claims. The meaning of claim terms must be given not only their structural meaning, but also their functional meaning, because although structure does not always dictate function, function normally always dictates structure. In this vein, an Examiner is not permitted to dissect a claim and remove the functional limitations before determining anticipation. Moreover, functional limitations in claims must be afforded patentable weight by the Examiner for determining anticipation.¹

35 U.S.C. § 102(b)

Campbell (US Patent No. 4,211,091)

Claims 1-6, 8-12 and 14-19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Campbell (US Patent 4,211,091). Examiner asserts that FIG. 2 of Campbell illustrates all claimed features including an insulating layer 14, a waterproof layer 38, and an outer layer that may be made of cloth.

In independent 1 of applicant's patent application, he claims a pouch that bounds an insulated and substantially

¹See, e.g., *In re Ludtke*, 441 F.2d 660, 169 USPQ 563, 566 (C.C.P.A. 1971); *In re Atwood*, 354 F.2d 365, 148 USPQ 203, 210 (C.C.P.A. 1966); *In re Bisley*, 197 F.2d 355, 94 USPQ 80, 83 (C.C.P.A. 1952).

water impermeable food warming chamber. The pouch includes opposing substantially coextensive lips. A passive, non-sealing engagement is present between the lips. The passive, non-sealing engagement between the lips causes a partial enclosure of the warming chamber. The partial enclosure caused by the passive, non-sealing engagement between the lips inhibits moisture vapor produced from warm food disposed in the warming chamber from building up in the warming chamber, which prevents the warm food disposed in the warming chamber from becoming soggy and allows enough moisture vapor to remain in the warming chamber for keeping the warm food disposed therein moist.

In independent claim 8 of applicant's patent application, he claims insulating structure that supporting and substantially engulfs a substantially water impermeable pouch having a warming chamber for accommodating food. The pouch and the insulating structure together provide generally opposing and substantially coextensive lips. A passive, non-sealing engagement exists between the lips and causes a partial enclosure of the warming chamber. The partial enclosure caused by the passive, non-sealing engagement between the lips inhibits moisture vapor produced from warm food disposed in the warming chamber from building up in the warming chamber, which prevents warm food disposed in the warming chamber from becoming soggy and allows enough moisture vapor to remain in the warming chamber for keeping warm food disposed therein moist.

In independent claim 14 of applicant's patent application, he claims a soft and flexible insulated pouch

having a substantially water impermeable warming chamber and lips. A non-sealing engagement exists between the lips, which causes a partial enclosure of the warming chamber. The partial enclosure caused by the non-sealing engagement between the lips inhibits moisture vapor produced from warm food disposed in the warming chamber from building up in the warming chamber, which prevents warm food disposed in the warming chamber from becoming soggy and allows enough moisture vapor to remain in the warming chamber for keeping warm food disposed therein moist.

In independent claims 1, 8 and 14 a non-sealing engagement exists between the lips, which causes a partial enclosure of the warming chamber. The partial enclosure caused by the non-sealing engagement between the lips inhibits moisture vapor produced from warm food disposed in the warming chamber from building up in the warming chamber, which prevents warm food disposed in the warming chamber from becoming soggy and allows enough moisture vapor to remain in the warming chamber for keeping warm food disposed therein moist. Much of this claim language is functionally limited, which is that the elements of the claims are defined not only with respect to their structural interaction, but also with respect to each element's intended function. The recited functional limitations assigned to applicant's claimed lips and the non-sealing engagement between them are built into applicant's claimed structure.

Functional limitations are to be given patentable weight even if it is only these limitations that

distinguish over the prior art. The Federal Circuit has interpreted functional language in an apparatus claim as requiring that an accused apparatus possess the capability of performing the recited function.²

In Campbell (US Patent 4,211,091), FIGS. 1-3 disclose a foldable, flexible insulated bag 10 having an inner liner 12 that is waterproof and that protects the food contents placed in the bag from exchange with the conditions of the external environment. A zipper 24 attached to the top of the bag closes the bag, which forms a substantially air-tight seal. FIGS. 4-7 of Campbell disclose another embodiment of an insulated bag. This bag is furnished with an adhesive tape fastener that forms an air-tight seal.

In Campbell, there is no teaching of an insulated pouch having lips and a non-sealing engagement between the lips that causes a partial enclosure of the warming chamber which inhibits moisture vapor produced from warm food disposed in the warming chamber from building up in the warming chamber, and prevents the warm food disposed in the warming chamber from becoming soggy and allows enough moisture vapor to remain in the warming chamber for keeping the warm food disposed therein moist. There is also no teaching or suggestion that the embodiments in Campbell are capable of carrying out this claimed function. To the contrary, Campbell fails to disclose and describe an insulated bag having the structure that is capable of carrying out the useful function of applicant's claimed invention. Because Campbell teaches of insulated bags

² Intel Corp. v. U.S. Int'l Trade Comm'n, 946 F.2d 821, 832, 20 USPQ 2d 1161, 1171 (Fed. Cir. 1991).

having closure elements which form air-tight seals, Campbell teaches away from applicant's non-sealing engagement between the claimed lips and of the desirability of providing such a non-sealing engagement that is facilitated by and limits the structure of applicant's claimed lips. For these reasons, Campbell is a non-enabling reference and is not a competent section 102(b) reference against applicant's independent claims 1, 8 and 14.

In view of the foregoing, all section 102(b) rejections in connection with Campbell are now believed moot and should be withdrawn.

35 U.S.C. § 102(b)

Campbell (US Patent No. 4,211,091)

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Campbell (US Patent 4,211,091).

As discussed above, Campbell fails to teach of an insulated pouch having lips and a non-sealing engagement between the lips that causes a partial enclosure of the warming chamber which inhibits moisture vapor produced from warm food disposed in the warming chamber from building up in the warming chamber, and prevents the warm food disposed in the warming chamber from becoming soggy and allows enough moisture vapor to remain in the warming chamber for keeping the warm food disposed therein moist. There is also no teaching or suggestion that the embodiments in Campbell are capable of carrying out this claimed function. To the contrary, Campbell fails to disclose and describe an

insulated bag having the structure that is capable of carrying out the useful function of applicant's claimed invention. Because Campbell teaches of insulated bags having closure elements which form air-tight seals, Campbell teaches away from applicant's non-sealing engagement between the claimed lips and of the desirability of providing such a non-sealing engagement that is facilitated by and limits the structure of applicant's claimed lips. For these reasons, Campbell is a non-enabling reference and is not a competent section 102(b) reference against applicant's independent claims 1, 8 and 14 and is also not a competent section 103(a) reference.

In view of the foregoing, all section 102(b) and section 103(a) rejections in connection with Campbell are now believed moot and should be withdrawn.

CONCLUSION

In sum, applicant's claim terms mean something entirely different than what Campbell provides. Applicant acknowledges that his claimed invention is not susceptible to an interpretation other than what he has provided in this response and in his specification. Applicant's specification limits and defines the breadth of his claims, and provides important teachings concerning the claim terms and their meaning. Applicant's specification was drafted specifically for getting around devices like that of Campbell, and applicant's claim terms are defined by his specification, and not by the prior art, namely, Campbell.

In view of the foregoing going, applicant believes that all of the claims presently pending in this case are

Serial Number: 09/664,885
. Art Unit: 3727

in condition for allowance, which action is earnestly
solicited.